IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 21ST AUGUST 2007 / 30TH SRAVANA 1929

WP(C).No. 2001 of 2007(L)

PETITIONER:

P.R. NAG, SHARANAM AYYAPPA BHAVAN,
KAYAMKULAM, ALAPPUZHA DISTRICT.

BY ADV. SRI.K.SURENDRA MOHAN

RESPONDENTS:

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1. THE SALES TAX OFFICER,
NEYYATTINKARA, THIRUVANANTHAPURAM DISTRICT.

2. THE TAHSILDAR,
NEYYATTINKARA.

3. THE DISTRICT COLLECTOR,
THIRUVANANTHAPURAM.

4. SRI.THANKA SWAMY, S/O.AYYAVU NADAR,
HOUSE NO.6/25, MATHANARAM PUTHUR,
KOTTARAM P.O., KANYAKUMARI DISTRICT,
TAMILNADU.

5. THE VILLAGE OFFICER,
KOTTUKAL VILLAGE, NEYYATTINKARA TALUK,
THIRUVANANTHAPURAM DISTRICT.

BY ADV. SHRI.SREEKRISHNAN, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) No. 2001/2007

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF THE SALE DEED DATED 28/05/1991 EXECUTED AS DEED NO.1027/91 IN THE SUB REGISTRAR OFFICE, NEYYATTINKARA.

P2 : COPY OF THE CERTIFICATE DATED 30/04/1991 ISSUED by the DISTRICT MANAGER, KERALA FINANCIAL CORPORATION, THIRUVANANTHAPURAM.

P3 : COPY OF THE NOTICE NO. 581/02 ISSUED BY THE 1ST RESPONDENT TO THE 4TH RESPONDENT.

P4 : COPY OF THE REPRESENTATION DATED 24/06/2002 SUBMITTED BY THE Petitioner BEFORE THE 3RD RESPONDENT.

P5 : COPY OF THE APPLICATION FOR LOCATION CERTIFICATE DATED 04/08/2004 SUBMITTED BY THE PETIITONER BEFORE TH 5TH RESPONDENT.

P6 : COPY OF THE APPLICATION FOR POSSESSION CERTIFICATE DATED 04/08/2004 SUBMITTED by the PETITIONER BEFORE THE 5TH RESPONDENT.

P7 : COPY OF THE REPRESENTAITON DATED 12/08/2004 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

// TRUE COPY //

PA TO JUDGE.

jg

C.N.RAMACHANDRAN NAIR, J.

WP(C) No. 2001 of 2007

Dated, this the 21st day of August, 2007

J U D G M E N T

Petitioner is challenging recovery proceedings initiated for recovery of arrears of sales tax due from 4th respondent. Petitioner admittedly purchased property from a partnership firm, of which defaulter was a partner. However, petitioner's case is that purchase was on 28/05/1991 i.e. prior to the introduction of Section 26(A) of the KGST Act, and so much so, there is no charge on the property for sales tax liability by operation of the said provision in the statute. However, learned Government Pleader submitted that charge over property is by operation of the provision of the RR Act, particularly Section 44 of the Act. Learned Government Pleader also submitted that validity of the transfer has to be considered with reference to Section 44(2) of the RR Act. Petitioner has further case that the property purchased is of four persons and only one of them is in arrears of tax, and so much so, the substantial portion of the property vests in him without any charge. In any case, at this stage, I do not think this Court should decide the matter i.e. the validity of the sale in favour of the petitioner and charge on property

for sales tax liability, if any. This writ petition is, therefore, disposed of directing 3rd respondent to consider the matter and pass final orders after hearing the petitioner. If charge is found on petitioner's property, there will be direction to the 3rd respondent to permit the petitioner to clear the arrears exclusive of interest, as recovery is obviously delayed by the recovery authority and to allow him to retain the property. In any case, no proceedings for recovery should be continued against the property before disposal of petitioner's claim as directed above.

(C.N.RAMACHANDRAN NAIR, JUDGE)

jg